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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,490	11/17/2005	Dominique Petit	05-240	3577
34704 7590 03/30/2007 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510			EXAMINER WOODALL, NICHOLAS W	
			ART UNIT 3733	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/30/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/527,490	Applicant(s) PETIT, DOMINIQUE	
	Examiner Nicholas Woodall	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 January 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on 01/19/2007.

Drawings

2. The drawings were received on 01/19/2007. These drawings are not acceptable for the reasons given below.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "115" has been used to designate both an axis in Figure 4 and an arm of the retaining cap shown in Figure 10.
4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: reference number 135 (Figure 4) is not listed in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheets should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11-15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferree (U.S. Publication 2003/0220643) in view of Commarmond (U.S. Patent 5,180,393).

Regarding claims 11 and 18, Ferree discloses a device comprising a support made from plastic and a second rod (Figure 6c of the reference). The second rod is formed of turns is partly embedded in the plastic support. Regarding claim 12, Ferree discloses a device wherein the support is substantially tubular or cylindrical in shape. Regarding claim 13, Ferree discloses a device wherein the turns of the second rod form a helical spring having an axis substantially parallel with an axis of the support. Ferree fails to disclose a device further comprising a first rod positioned substantially coaxial (claim 14) within the turns of the second rod (claim 11), wherein the first rod has an outer diameter smaller than the inner diameter of the turns of the second rod (claim 15). Commarmond teaches a device comprising a first rod positioned substantially coaxial within the turns of a second rod, wherein the first rod has an outer diameter smaller than the inner diameter of the turns of the second rod in order to provide rigidity to the device during traction (column 2 lines 14-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of

Ferree further comprising a first rod positioned substantially coaxial within the turns of the second rod, wherein the first rod has an outer diameter smaller than the inner diameter of the turns of the second rod in view of Commarmond in order to provide rigidity to the device during traction.

7. Claims 16, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferree (U.S. Publication 2003/0220643) in view of Commarmond (U.S. Patent 5,180,393) further in view of Howland (U.S. Publication 2002/0173791).

Regarding claims 16, 17, and 19, the combination of Ferree and Commarmond disclose the invention as claimed except for the device further comprising a substantially U-shaped stiffness element. Howland teaches a device further comprising a substantially U-Shaped stiffness element connected between at least two implantable connecting assemblies in order to prevent the at least two implantable connecting assemblies from moving towards one another (page 2 paragraph 016). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Ferree modified by Commarmond further comprising a substantially U-shaped stiffness element connected between at least two implantable connecting assemblies in view of Howland in order to prevent the at least two implantable connecting assemblies from moving towards one another.

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferree (U.S. Publication 2003/0220643) in view of Commarmond (U.S. Patent 5,180,393) further in view of Howland (U.S. Publication 2002/0173791) as a second interpretation different from the one used above.

Regarding claim 20, the combination of Ferree and Commarmond disclose the invention as claimed except for the device further comprising at least one rigid linking element. Howland teaches a device further comprising at least one rigid linking element between at least two anchor screws in order to prevent the anchor screws from moving towards one another (page 2 paragraph 16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Ferree modified by Commarmond further comprising at least one rigid linking element between at least two anchor screws in order to prevent the anchor screws from moving towards one another.

Response to Arguments

9. Applicant's arguments with respect to claims 11-20 have been considered but are moot in view of the new ground(s) of rejection. The examiner has presented new grounds of rejection for claims 11-20 as discussed above. The amendments to claims 11-20 required the new grounds of rejection, since the limitation of the second rod being at least partially embedded in the support member was not required in the claims prior to the amendment.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER